

CCRB CASE CLOSING FORM

Assigned Investigator: Dinoso		Team: 7	CCRB#: 9703393	FADO: F, A
Date of incident: 9/12/97	Time of incident: 7:25 p.m.	Location of incident: § 87(2)(b)	Pct. of occurrence: 106 th Precinct	Date SOL expires: 3/12/99
Date reported: 9/19/97	Time reported: 6:47 p.m.	To whom/where/how reported: To CCRB by phone		
Complainant: § 87(2)(b)	Home address: § 87(2)(b)			
Victims: § 87(2)(b) § 87(2)(b)	Same as above § 87(2)(b)			
Witnesses:				
Subject officers: Lt. Gary Messina PO David Stein PO Michael Annibale PO Kathleen Reilly PO Lucia Fay	Shield: N/A 8872 7416 5400 29538	Tax: 874530 907400 917234 916545 915696	Command: 102 nd Precinct 106 th Precinct 106 th Precinct 106 th Precinct 106 th Precinct	
Witness officers: PO Darrin Taylor Lt. Peter Lombnes	22265 N/A	918388 884227	106 th Precinct 106 th Precinct	
Allegations by letter:			Recommendations:	
A. Force – PO Stein beat § 87(2)(b) in violation of P.G. 104-01. B. Force – PO Annibale beat § 87(2)(b) in violation of P.G. 104-01. C. Force – PO Reilly beat § 87(2)(b) in violation of P.G. 104-01. D. Force – PO Fay beat § 87(2)(b) in violation of P.G. 104-01. E. Abuse of Authority – Lt. Messina entered the DiBello home illegally in violation of P.G. 104-01. F. Force – Lt. Messina dragged § 87(2)(b) by his hair in violation of P.G. 104-01.			§ 87(2)(g) § 87(2)(g) § 87(2)(g) § 87(2)(g) § 87(2)(g) § 87(2)(g)	

Summary of Complaint

The original complaint was filed by Ms. § 87(2)(b) mother of § 87(2)(b) (Encl. 1A-C) Upon interview, § 87(2)(b) stated that on the evening September 12, 1997, he had been visiting his friend, § 87(2)(b) at his home at § 87(2)(b) in South Ozone Park. As he drove eastbound on 111th Avenue, he noticed a red Taurus following behind him. Some twenty blocks later, he applied the breaks as he approached the Van Wyck Expressway service road. The breaks apparently failed and § 87(2)(b) crashed his vehicle into a wall. The red Taurus pulled along side of him. Two men and two women exited the vehicle and approached him with their guns drawn. The individuals, whom § 87(2)(b) latter leaned were police officers, opened the car doors and dragged him out. All four officers proceeded to beat § 87(2)(b). This beating included multiple blows to the head with a flashlight. This beating is alleged to have lasted three to four minutes. § 87(2)(b) was placed in an RMP and transported back § 87(2)(b) by a black uniformed officer and a white lieutenant who had arrived on the scene.

At the home of the § 87(2)(b) § 87(2)(b) remained with the uniformed officer and lieutenant while the four plain-clothes officers walked through the open front door. Some time later, § 87(2)(b) was removed the house and arrested. § 87(2)(b) claims that § 87(2)(b) was also beaten although he did not witness this event. He further states that § 87(2)(b) brother, § 87(2)(b) was "almost arrested." § 87(2)(b) and § 87(2)(b) were then transported to the 106th Precinct.

§ 87(2)(b) states that he was initially denied medical attention but was later transported to § 87(2)(b). On § 87(2)(b), § 87(2)(b) received further treatment a § 87(2)(b) (Encl. 3A-B)

Extent and Results of Investigation

Civilian Witness Statements

§ 87(2)(b) refused a request to be interviewed while incarcerated at § 87(2)(b) . (Encl. 27) § 87(2)(b) mother, § 87(2)(b) , also believed to be a witness, initially claimed no knowledge of the incident and subsequently refused an interview. (Encl. 29)

§ 87(2)(b) stated that he was at home when Lt. Messina and another officer came into his basement and attempted to place him under arrest. § 87(2)(b) states that he briefly resisted arrest. He was subsequently handcuffed and "dragged" by his hair up the stairs and outside by Lt. Messina. Once outside of the house, he observed about twenty officers and his brother in an RMP. § 87(2)(b) was released and issued a "D.A.T." at the scene. (Encl. 4A)

Police Officer Statements

All six officers (Lt. Messina, PO Taylor, PO Annibale, PO Stein, PO Fay and PO Reilly)
§ 87(2)(g)

(Encl. 5D, 6D, 7E, 8E, 9E-F, 11C-D)

On September 12, 1997 at about 7:20 p.m., the 106th Precinct Desk Officer advised Special Operations Lieutenant Messina that an anonymous male had called the precinct T/S and advised that a delivery of drugs was en route to a location in the vicinity of § 87(2)(b)

The caller further advised that the shipment was to be made by a white male driving a blue Cadillac. Lt. Messing advised plainclothes officers Stein, Reilly and Fay to proceed to the location and look out for the individual described by the caller. Lt. Messina and two plainclothes officers, PO Annibale and PO Taylor, set up in a marked RMP around the corner from the location. Upon interview, Lt. Messina further added that he was advised by the Desk Officer that the anonymous male called a second time stating the male had already made a shipment. Shortly thereafter, § 87(2)(b) was observed exiting § 87(2)(b) and entering a blue Cadillac. § 87(2)(b) proceeded along 111th Avenue. The unmarked vehicle followed with the marked RMP following them. § 87(2)(b) immediately began driving at a high rate of speed. Lt. Messina estimated that § 87(2)(b) was traveling at speeds upwards of 70 miles per hour. PO Reilly added that the dash light of the unmarked vehicle had been activated. Near the overpass of the Van Wyck Expressway, § 87(2)(b) lost control of the car and crashed headlong into a wall, incurring substantial damage to the front end of the automobile.

The unmarked car pulled alongside the driver's side of the crashed vehicle while the marked vehicle pulled alongside the passenger's side. § 87(2)(b) was moving back and forth along the front seat between the driver's door to the passenger's door. Officers Reilly and Fay and Lieutenant Messina approached the passenger's side while officers Stein, Annibale and Taylor approached driver's side. Among the officers' accounts, there is some discrepancy about the verbal commands given to § 87(2)(b). It is agreed, though, that § 87(2)(b) reached under the seat and that the officers had their weapons drawn or pointed. Lt. Messina opened the passenger door and entered the vehicle to apprehend § 87(2)(b). A struggle ensued. Meanwhile, PO Annibale opened the driver's door. All of the officers present at the scene of the crash state that § 87(2)(b) then fell out of the driver's door and onto the ground. Lt. Messina states, though, that § 87(2)(b) was pulled out of the car and onto the ground by an unidentified officer. Lt. Messina and PO Stein then struggled to turn § 87(2)(b) onto his stomach in order to handcuff him. However, § 87(2)(b) refused to be cuffed and instead swung his arms and kicked at the officers. There is considerable disagreement among the officers as to how § 87(2)(b) was finally restrained. PO Taylor stated that Officers Reilly and Fay had attempted to restrain § 87(2)(b)'s legs but were unsuccessful. PO Taylor then moved in a restrained § 87(2)(b) legs, allowing PO Stein and Lt. Messina to handcuff § 87(2)(b) (Encl. 6D). Officers Reilly and Fay state that they had no physical contact with § 87(2)(b) (Encl. 7E, 8E). In any event, the officers finally subdued § 87(2)(b) handcuffed him and placed him the marked RMP.

PO Stein and Lt. Messina state that upon questioning in the RMP, § 87(2)(b) conceded that there was a quantity of drugs back at § 87(2)(b). A check of § 87(2)(b)'s vehicle also revealed that it had been stolen during a car jacking on a prior date.

Officers Stein and Taylor and Lt. Messina along with § 87(2)(b) then drove back to § 87(2)(b). PO Stein and Lt. Messina approached the front door of the house and were met by a middle-aged female. They stated that they were looking for § 87(2)(b). The woman opened the front door and pointed PO Stein and Lt. Messina in the direction of the basement. At the bottom of the stairs, PO Stein and Lt. Messina observed § 87(2)(b) along

with alleged drug paraphernalia and an alleged quantity of cocaine. § 87(2)(b) was also present. The two brothers immediately began to fight with PO Stein and Lt. Messina. Lt. Messina was able to handcuff § 87(2)(b). However, § 87(2)(b) attempted to escape even after he had been handcuffed. The officers then handcuffed § 87(2)(b). Both men were then led out of the house.

§ 87(2)(b), § 87(2)(f)

(Encl. 9F, 11D) § 87(2)(b) and § 87(2)(b) were then transported to the 106th Precinct station house.

Lt. Lombnes confirmed that he entered § 87(2)(b) and § 87(2)(b) arrest in the Command Log. He could not specifically recall the incident or § 87(2)(b) physical condition at the time of arrest. (Encl. 10)

Police Documents

Police records indicate that § 87(2)(b) was charged with one count each of: Grand Larceny – 4, Criminal Possession of Stolen Property – 4, Unauthorized Use of a Vehicle – 3 and Operating a Motor Vehicle Under the Influence of Drugs – 1. (Encl. 18) A Complaint Report filed on September 6, 1997 confirmed that the vehicle that § 87(2)(b) had been driving had been reported stolen. (Encl. 13A-B) § 87(2)(b) was charged with one count each of: Criminal Possession of a Controlled Substance – 3, Criminal Possession of a Controlled Substance – 5, Resisting Arrest, and two counts of Use of Drug Paraphernalia – 2. (Encl. 19)

The 106th Precinct Command Log lists an arrest entry for § 87(2)(b) and § 87(2)(b) at 10:35 p.m.. A side notation indicates that § 87(2)(b) initially refused medical attention. Subsequent entries at 10:45 p.m. and 10:55p.m. show that EMS did respond to the station house and transport § 87(2)(b) to § 87(2)(b). (Encl. 15)

Medical Records

Subpoenas for § 87(2)(b) medical records from § 87(2)(b) were returned with negative results. The returned requests indicate no record of § 87(2)(b) having been treated at § 87(2)(b) during 1997. (Encl. 23A, 25A)

Medical records from § 87(2)(b) show that § 87(2)(b) was seen in the emergency room on § 87(2)(b). § 87(2)(b) complained of blood in his urine and a backache resulting from a motor vehicle accident on September 12, 1997. (Encl. 12E) He was examined and diagnosed with musculoskeletal pain and discharged. (Encl. 12F)

Recommendations and Conclusion

Assessment of § 87(2)(b) Statement

§ 87(2)(g)

§ 87(2)(b) also states that he noticed that a car had been following him for some twenty blocks but did not suspect that he was being followed by the police. § 87(2)(g) he states that he did not know

the individuals at the scene of the crash were police officers and then goes on to state that the individuals were acting like police officers. Second, § 87(2)(b) states that he the unmarked vehicle contained four plainclothes officers. It is known that only three officers were in each of the two vehicles and that only three plainclothes officers were present at the scene. Third, § 87(2)(b) states he was denied immediate medical treatment at the precinct. Yet the command log shows that § 87(2)(b) initially refused medical treatment and that EMS was present ten minutes after he arrived at the station house. Lastly, § 87(2)(b) states that the accident was of minimal severity. Two days later, though, § 87(2)(b) complains of injuries sustained in a motor vehicle accident. He makes no mention whatsoever of having been assaulted and furthermore there is no sign of serious injury consistent with the alleged beating. § 87(2)(g)

[REDACTED]

[REDACTED]

Assessment of § 87(2)(b) Statement

§ 87(2)(g)

First, § 87(2)(b)

§ 87(2)(b) states that he was by himself in the basement when he was apprehended and that his brother had already been placed in an RMP when he was taken out of the house. By all accounts, even § 87(2)(b), § 87(2)(b) and § 87(2)(b) were both in the house when Lt. Messina and PO Stein entered and both brothers exited together. Second, § 87(2)(b) states that when he exited the house, there were about twenty officers present. By all accounts, there were no more than three officers outside of the location.

Assessment of Officers' Statements

§ 87(2)(g)

[REDACTED] For example, the officers state that § 87(2)(b) fled at a high rate of speed from a location of criminal activity in a stolen vehicle and with the police pursuit lost control of his vehicle and crashed. § 87(2)(b) by contrast, states that he was unaware of any criminal activity and unaware that he was driving in a stolen vehicle. While driving at a normal speed, his breaks fail causing him crash. Without provocation, the officers respond by administering a four-minute beating.

§ 87(2)(g)

[REDACTED]

Allegations A – D. § 87(2)(g)

§ 87(2)(g)

[REDACTED]

[REDACTED]

Allegations E § 87(2)(g)

§ 87(2)(b) alleges that Lt. Messina and PO Stein lacked the proper authority to enter the house at § 87(2)(b). However, Lt. Messina and PO Stein each state that Ms. DiBello

gave them consent by opening the door and directing them to her sons. § 87(2)(b) refused to provide a statement. § 87(2)(b) was also not present for the actual entry. § 87(2)(g)

Because Lt. Messina was the ranking officer at the scene, the allegation has been attributed to him.

Allegation F. § 87(2)(g)

§ 87(2)(g)

Investigator:



Date: 8/5/98

Supervisor:



Date: 8/5/98

Reviewed by:



Date: 8/5/98

Reviewed by:



Date: _____